IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.C. No. 59 of 2003
DATE OF DECISION: 16.11.2007

Goodyear India Limited

…Applicant

Versus

Commissioner of Central Excise, Delhi-II

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Ravinder Narain, Advocate,
for the applicant.

Mr. Sanjeev Kaushik, Advocate,
for the respondent.

M.M. KUMAR, J.

This petition filed under Section 35-H(1) of the Central Excise Act, 1944, prays for issuance of direction to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (now known as 'Customs, Excise and Service Tax Appellate Tribunal') (for brevity, 'the Tribunal') for referring the following substantial questions of law:

"1. Whether the CEGAT was justified in directing 'disallowance' of the credit taken in respect of

MODVAT of AED paid on inputs, when no allegation for 'disallowance' was made in the Show Cause Notice, which was confined only to the 'recovery' of demand of AED and not for disallowance of credit taken?

2. In a case where MODVAT credit of duties of Excise paid on inputs is not taken fully under Rule 57A read with Rule 57G of the Central Excise Rules, 1944 within the period of six months referred to therein, whether the credit of the balance amount of duty of excise, not taken by mistake earlier, being the Additional Excise Duty (AED) paid on the same inputs, as per the same invoices, can be taken subsequently.

3. Whether the CEGAT was justified in reversing the order of the Commissioner (Appeal), who had held that there was no justification for imposing any penalty in the facts of the case, where MODVAT credit was taken in respect of AED subsequently on realising the mistake in not taking the credit though entitled to and when there was no utilization of the said credit taken and as such, whether there was any justification for restoring the penalty of Rs. 1 lac imposed by the Assistant Commissioner."

After hearing learned counsel for the parties, in our opinion, the above questions of law are required to be referred for the opinion of this Court. Accordingly, we direct the Tribunal to draw a

statement of the case and to refer the above questions of law for the opinion of this Court.

The petition is disposed of.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 16, 2007
Pkapoor